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9 **BEFORE THE**
BOARD OF REGISTERED NURSING
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 4002022007118

13 **SARAH ANNE ERNY, AKA SARAH**
14 **ANNE COLE**
15 **471 Ocean View Ave.**
Pismo Beach, CA 93449

ACCUSATION

16 **Registered Nurse License No. 830176**
17 **Nurse Practitioner Certificate No. 22500**
18 **Nurse Practitioner Furnishing Certificate**
19 **No. 22500**

Respondent.

20
21 **PARTIES**

22 1. Loretta Melby, R.N., M.S.N. (Complainant) brings this Accusation solely in her
23 official capacity as the Executive Officer of the Board of Registered Nursing (Board),
24 Department of Consumer Affairs.

25 2. On or about September 27, 2012, the Board issued Registered Nurse License Number
26 830176 to Sarah Anne Erny, aka Sarah Anne Cole (Respondent). The Registered Nurse License
27 was in full force and effect at all times relevant to the charges brought herein and will expire on
28 September 30, 2022, unless renewed.

3. On or about October 2, 2012, the Board issued Nurse Practitioner Certificate Number 22500 to Respondent. The Nurse Practitioner Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on September 30, 2022, unless renewed.

4. On or about March 29, 2013, the Board issued Nurse Practitioner Furnishing Certificate Number 22500 to Respondent. The Nurse Practitioner Furnishing Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on September 30, 2022, unless renewed.

JURISDICTION

5. This Accusation is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

6. Section 2750 of the Code provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

7. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license.

STATUTORY PROVISIONS

8. Section 2761 of the Code states:

The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, the following:

(1) Incompetence, or gross negligence in carrying out usual certified or licensed nursing functions.

• • •

(d) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violating of, or conspiring to violate any provision or term of this chapter [the Nursing Practice Act] or regulations adopted pursuant to it.

• • •

1 9. Section 2052 of the Code states:

2 (a) Notwithstanding Section 146 , any person who practices or attempts to
3 practice, or who advertises or holds himself or herself out as practicing, any system or
4 mode of treating the sick or afflicted in this state, or who diagnoses, treats, operates
5 for, or prescribes for any ailment, blemish, deformity, disease, disfigurement,
6 disorder, injury, or other physical or mental condition of any person, without having
7 at the time of so doing a valid, unrevoked, or unsuspended certificate as provided in
8 this chapter or without being authorized to perform the act pursuant to a certificate
9 obtained in accordance with some other provision of law is guilty of a public offense,
10 punishable by a fine not exceeding ten thousand dollars (\$10,000), by imprisonment
11 pursuant to subdivision (h) of Section 1170 of the Penal Code , by imprisonment in a
12 county jail not exceeding one year, or by both the fine and either imprisonment.

13 (b) Any person who conspires with or aids or abets another to commit any act
14 described in subdivision (a) is guilty of a public offense, subject to the punishment
15 described in that subdivision.

16 (c) The remedy provided in this section shall not preclude any other remedy
17 provided by law.

18 10. Section 2054 of the Code states, in pertinent part:

19 (a) Any person who uses in any sign, business card, or letterhead, or, in an
20 advertisement, the words "doctor" or "physician," the letters or prefix "Dr.," the
21 initials "M.D.," or any other terms or letters indicating or implying that he or she is a
22 physician and surgeon, physician, surgeon, or practitioner under the terms of this or
23 any other law, or that he or she is entitled to practice hereunder, or who represents or
24 holds himself or herself out as a physician and surgeon, physician, surgeon, or
25 practitioner under the terms of this or any other law, without having at the time of so
26 doing a valid, unrevoked, and unsuspended certificate as a physician and surgeon
27 under this chapter, is guilty of a misdemeanor.

28 ...

 11. Section 2836.1 of the Code states, in pertinent part:

 Neither this chapter nor any other provision of law shall be construed to
 prohibit a nurse practitioner from furnishing or ordering drugs or devices when all of
 the following apply:

 (a) The drugs or devices are furnished or ordered by a nurse practitioner in
 accordance with standardized procedures or protocols developed by the nurse
 practitioner and the supervising physician and surgeon when the drugs or devices
 furnished or ordered are consistent with the practitioner's educational preparation or
 for which clinical competency has been established and maintained.

 (b) The nurse practitioner is functioning pursuant to standardized procedure, as
 defined by Section 2725, or protocol. The standardized procedure or protocol shall be
 developed and approved by the supervising physician and surgeon, the nurse
 practitioner, and the facility administrator or the designee.

 (c)(1) The standardized procedure or protocol covering the furnishing of drugs
 or devices shall specify which nurse practitioners may furnish or order drugs or

1 devices, which drugs or devices may be furnished or ordered, under what
2 circumstances, the extent of physician and surgeon supervision, the method of
periodic review of the nurse practitioner's competence, including peer review, and
review of the provisions of the standardized procedure.

3 (2) In addition to the requirements in paragraph (1), for Schedule II controlled
4 substance protocols, the provision for furnishing Schedule II controlled substances
5 shall address the diagnosis of the illness, injury, or condition for which the Schedule
II controlled substance is to be furnished.

6 (d) The furnishing or ordering of drugs or devices by a nurse practitioner occurs
7 under physician and surgeon supervision. Physician and surgeon supervision shall not
8 be construed to require the physical presence of the physician, but does include (1)
collaboration on the development of the standardized procedure, (2) approval of the
standardized procedure, and (3) availability by telephonic contact at the time of
patient examination by the nurse practitioner.

9 (e) For purposes of this section, no physician and surgeon shall supervise more
10 than four nurse practitioners at one time.

11 (f)(1) Drugs or devices furnished or ordered by a nurse practitioner may include
12 Schedule II through Schedule V controlled substances under the California Uniform
13 Controlled Substances Act (Division 10 (commencing with Section 11000) of the
Health and Safety Code) and shall be further limited to those drugs agreed upon by
the nurse practitioner and physician and surgeon and specified in the standardized
procedure.

14 (2) When Schedule II or III controlled substances, as defined in Sections 11055
15 and 11056, respectively, of the Health and Safety Code, are furnished or ordered by a
16 nurse practitioner, the controlled substances shall be furnished or ordered in
17 accordance with a patient-specific protocol approved by the treating or supervising
18 physician. A copy of the section of the nurse practitioner's standardized procedure
relating to controlled substances shall be provided, upon request, to any licensed
pharmacist who dispenses drugs or devices, when there is uncertainty about the nurse
practitioner furnishing the order.

19 . . .

20 **REGULATORY PROVISIONS**

21 12. California Code of Regulations, title 16, section 1442, states:

22 As used in Section 2761 of the code, "gross negligence" includes an extreme
23 departure from the standard of care which, under similar circumstances, would have
24 ordinarily been exercised by a competent registered nurse. Such an extreme departure
25 means the repeated failure to provide nursing care as required or failure to provide care or
to exercise ordinary precaution in a single situation which the nurse knew, or should have
known, could have jeopardized the client's health or life.

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13. California Code of Regulations, title 16, section 1471, states:

For purposes of this article:

(a) "Standardized procedure functions" means those functions specified in Business and Professions Code Section 2725(c) and (d) which are to be performed according to "standardized procedures";

(b) "Organized health care system" means a health facility which is not licensed pursuant to Chapter 2 (commencing with Section 1250), Division 2 of the Health and Safety Code and includes, but is not limited to, clinics, home health agencies, physicians' offices and public or community health services;

(c) "Standardized procedures" means policies and protocols formulated by organized health care systems for the performance of standardized procedure functions.

14. California Code of Regulations, title 16, section 1472, states:

An organized health care system must develop standardized procedures before permitting registered nurses to perform standardized procedure functions. A registered nurse may perform standardized procedure functions only under the conditions specified in a health care system's standardized procedures; and must provide the system with satisfactory evidence that the nurse meets its experience, training, and/or education requirements to perform such functions.

15. California Code of Regulations, title 16, section 1474, states:

Following are the standardized procedure guidelines jointly promulgated by the Medical Board of California and by the Board of Registered Nursing:

(a) Standardized procedures shall include a written description of the method used in developing and approving them and any revision thereof.

(b) Each standardized procedure shall:

(1) Be in writing, dated and signed by the organized health care system personnel authorized to approve it.

(2) Specify which standardized procedure functions registered nurses may perform and under what circumstances.

(3) State any specific requirements which are to be followed by registered nurses in performing particular standardized procedure functions.

(4) Specify any experience, training, and/or education requirements for performance of standardized procedure functions.

(5) Establish a method for initial and continuing evaluation of the competence of those registered nurses authorized to perform standardized procedure functions.

(6) Provide for a method of maintaining a written record of those persons authorized to perform standardized procedure functions.

1 (7) Specify the scope of supervision required for performance of standardized
2 procedure functions, for example, immediate supervision by a physician.

3 (8) Set forth any specialized circumstances under which the registered nurse is
4 to immediately communicate with a patient's physician concerning the patient's
5 condition.

6 (9) State the limitations on settings, if any, in which standardized procedure
7 functions may be performed.

8 (10) Specify patient record keeping requirements.

9 (11) Provide for a method of periodic review of the standardized procedures.

10 **COST RECOVERY**

11 16. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
12 administrative law judge to direct a licensee found to have committed a violation or violations of
13 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
14 enforcement of the case, with failure of the licensee to comply subjecting the license to not being
15 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
16 included in a stipulated settlement.

17 **CONTROLLED SUBSTANCES AND DANGEROUS DRUGS**

18 17. Section 4021 of the Code states:

19 Controlled substances: means any substance listed in Chapter 2 (commencing
20 with Section 11053) of Division 10 of the Health and Safety Code.

21 18. Section 4022 of the Code states:

22 "Dangerous drug" or "dangerous device" means any drug or device unsafe for
23 self-use in humans or animals, and includes the following:

24 (a) Any drug that bears the legend: "Caution: federal law prohibits
25 dispensing without prescription," "Rx only," or words of similar import.

26 (b) Any device that bears the statement: "Caution: federal law restricts this
27 device to sale by or on the order of a _____," "Rx only," or words of similar import,
28 the blank to be filled in with the designation of the practitioner licensed to use or
order use of the device.

(c) Any other drug or device that by federal or state law can be lawfully
dispensed only on prescription or furnished pursuant to Section 4006.

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1 19. Testosterone is a Schedule III controlled substance pursuant to Health and Safety
2 Code section 11506, subdivision (f)(30), and a dangerous drug pursuant to Business and
3 Professions Code section 4022.

4 **FACTUAL ALLEGATIONS**

5 20. At all times relevant herein, Respondent, a nurse practitioner, was doing business as
6 Holistic Women's Healing, a holistic medical facility located in Arroyo Grande, California,
7 where Respondent worked as a nurse practitioner.

8 21. On or about August 30, 2019, the Medical Board of California received a complaint
9 alleging that Respondent was representing to patients that she was a medical doctor, and that
10 Respondent was writing prescriptions for testosterone to patients who see her under the
11 assumption that she is a medical doctor. An investigation was initiated, which determined the
12 following:

13 22. Holistic Women's Healing was operating as a sole proprietorship business. For the
14 period in or about January 2020 through December 2021, Respondent failed to have a valid
15 business license for Holistic Women's Health.

16 23. On Respondent's Holistic Women's Healing website, Respondent made statements
17 representing to the public that she was a medical doctor, including, but not limited to, the
18 following:

- 19 • "My patients call me Dr. Sarah . . ."
- 20 • "I practice medicine with a VERY integrative style..."
- 21 • "Appointments are still available with Dr. Sarah . . ."

22 24. On at least 14 occasions on Respondent's Holistic Women's Healing website,
23 Respondent referred to herself as "Dr. Sarah Erny" in reference to authoring various blog articles.
24 Respondent's Holistic Women's Healing website also allowed individuals to subscribe to receive
25 "Dr. Sarah's Newsletter."

26 25. On another website titled "Dr. Sarah's Wellness Center" Respondent offered courses
27 to the public in "Essential Oils for Emotional Health" and "Lab Review for Thyroid Health."

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1 26. Respondent holds a doctor of nursing practice (DNP) educational degree only.
2 Respondent is not licensed as a medical doctor by the Medical Board of California.

3 27. Respondent was operating Holistic Women's Healing under a collaboration and
4 supervision arrangement, including Standardized Procedures and Protocols, with Dr. A.M., an
5 obstetrician/gynecologist (OB/GYN) physician.

6 28. The investigation revealed that for the period from late 2018 through the first half of
7 2020, Respondent would see approximately 24-30 patient per week, with approximately 70% of
8 her patients receiving prescriptions for controlled substances. During this time, Respondent
9 wrote more than 1,600 prescriptions for Schedule III controlled substances, the majority of which
10 were for testosterone (an anabolic steroid), for approximately 277 patients, including male
11 patients being treated for hypogonadism or profound testosterone deficiency, as well as female
12 patients being treated for peri and post-menopausal issues. The majority of these prescriptions
13 were for micronized testosterone powder, which would require compounding and assay for
14 appropriate usage and dosage, while the others were for testosterone oil, which would need to be
15 administered via injection.

16 29. A review of Respondent's controlled substance prescribing patterns revealed that
17 Respondent was writing an excessive amount of testosterone, which was consistent with
18 overprescribing.

19 30. Patients receiving prescriptions for testosterone are generally being treated for
20 complex medical issues that require careful laboratory monitoring and repeat physical
21 examinations for proper diagnosis and treatment, and are usually seen under the purview of
22 physicians specializing in endocrinology or urology.

23 31. Respondent's facility consisted of an office environment without proper medical
24 equipment, which would make physical examinations, assessments and treatment of patients
25 difficult.

26 32. The investigation also determined that, during this time period, no physician was
27 present at the facility. Dr. A.M.'s supervision of Respondent only consisted of a weekend visit
28 from out-of-state every 2-3 months to review approximately 20% of Respondent's charts. There

1 was no contemporaneous sharing of medical records, and little to no oversight or monitoring of
2 Respondent's prescribing of controlled substances to patients.

3 **FIRST CAUSE FOR DISCIPLINE**

4 **(Gross Negligence)**

5 33. Respondent is subject to disciplinary action under Code section 2761, subdivision
6 (a)(1), in conjunction with California Code of Regulations, title 16, section 1442, on the grounds
7 of unprofessional conduct, in that Respondent committed acts constituting gross negligence.
8 Complainant refers to, and by this reference incorporates, the allegations set forth above in
9 paragraphs 20-32, as though set forth in full herein.

10 **SECOND CAUSE FOR DISCIPLINE**

11 **(Representation of Being a Medical Doctor without Licensure)**

12 34. Respondent is subject to disciplinary action under Code section 2761, subdivision (a),
13 on the grounds of unprofessional conduct for violating Code sections 2052, subdivision (a), and
14 2054, in that Respondent stated, represented, indicated and/or implied that she was a doctor on
15 her website(s), when in fact Respondent is not validly licensed as medical doctor by the Medical
16 Board of California. Complainant refers to, and by this reference incorporates, the allegations set
17 forth above in paragraphs 20-32, as though set forth in full herein.

18 **THIRD CAUSE FOR DISCIPLINE**

19 **(Unprofessional Conduct)**

20 35. Respondent is subject to disciplinary action under Code section 2761, subdivision (a),
21 in that Respondent committed acts constituting unprofessional conduct. Complainant refers to,
22 and by this reference incorporates, the allegations set forth above in paragraphs 20-32, as though
23 set forth in full herein.

24 **PRAYER**

25 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
26 and that following the hearing, the Board of Registered Nursing issue a decision:

27 1. Revoking or suspending Registered Nurse License Number 830176, issued to Sarah
28 Anne Erny, aka Sarah Anne Cole;


2. Revoking or suspending Nurse Practitioner Certificate Number 22500, issued to Sarah Anne Erny, aka Sarah Anne Cole;

3. Revoking or suspending Nurse Practitioner Furnishing Certificate Number 22500, issued to Sarah Anne Erny, aka Sarah Anne Cole;

4. Ordering Sarah Anne Erny to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,

5. Taking such other and further action as deemed necessary and proper.

DATED: August 25, 2022

for 
LORETTA MELBY, R.N., M.S.N.
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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